



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 08, 2022

IN THE MATTER OF:

Appeal Board No. 622739

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective November 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 22, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. In light of inconsistent testimony regarding whether the offer of employment made to the claimant included any

contingencies, and given the claimant's testimony that the employment offer was made in writing, the Board has determined that it is appropriate for the written employment offer to be produced to assist in determining the bona fide nature of the job offer made to the claimant, and deciding whether the claimant had good cause under the Labor Law for her voluntary separation from employment.

At the further hearing, the claimant is directed to produce the written employment offer made to her by "CBRE." If not clear from the written offer, the claimant shall be questioned regarding the specific terms of the

employment offer, including the salary, start date, hours, and location where the claimant would be working.

The claimant shall also be questioned regarding how and when she was advised that she was not going to be starting to work at the new job, and what she was told about why she could not start as expected. If the claimant received this notice in writing, the claimant shall produce that writing at the remand hearing.

All documents produced at the remand hearing shall be received into evidence after the appropriate confrontation and opportunity for objection. The claimant is placed on notice that failure to produce the documentation directed by the Board may lead to the hearing Judge or the Board taking an adverse inference against the claimant, and determining that the evidence not produced would not have supported the claimant's position.

In addition, the claimant's completed questionnaire and attachment, in the file at pages 5 - 8, shall be received into evidence after the appropriate confrontation and opportunity for objection. The claimant shall be questioned about the information provided in the statement attached to the completed questionnaire.

The hearing Judge may receive into the record any testimony or other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the

initial determination disqualifying the claimant from receiving benefits, effective November 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER